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Attorneys for Burlington Landscaping, Inc.
Our File No. 78644 ELT

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

FITCHBURG MUTUAL INSURANCE
COMPANY, AS SUBROGEE OF PETER
& IRENE ANEVSKI, H/W

Plaintiff,

V.

BURLINGTON LANDSCAPING, INC.

V.

CAST LIGHTING, AQUARIUS
IRRIGATION, CAST LIGHTING AS
SUBSIDIARY OF AQUARIUS
IRRIGATION

Defendants.

CIVIL ACTION NO.: 2:13-CV-05973-
SRC-CLW

Civil Action

THIRD PARTY COMPLAINT

THIRD PARTY COMPLAINT

Plaintiff, Fitchburg Mutual Insurance Company, has filed a complaint United States District Court for the District of New Jersey. A copy of the District Court complaint is attached hereto as **Exhibit "A"**. Defendant/Third Party Plaintiff, Burlington Landscaping, Inc., by way of Third Party Complaint against the Third Party Defendants, Cast Light, Aquarius Irrigation & Cast Light as a subsidiary of Aquarius Irrigation says:

PARTIES

1. Burlington Landscaping, Inc., an entity located in North Haledon, New Jersey, at times relevant to this matter was engaged in commerce in the State of New Jersey.

2. Fitchburg Mutual Insurance Company is an organization existing under the laws of the Commonwealth of Massachusetts with its principal place of business in Massachusetts and is licensed and was licensed at the time of the incident to engage in the insurance business in the State of New Jersey.

3. Third party defendants Cast Lighting, Aquarius Irrigation and Cast Lighting as a Subsidiary of Aquarius Irrigation, entities located in Hawthorn, New Jersey, at times relevant to this matter were engaged in commerce in the State of New Jersey.

JURISDICTION AND VENUE

4. Plaintiff, Fitchburg Mutual Insurance Company a/s/o Peter and Irene Anevski, filed this complaint pursuant to 28 U.S.C. § 1332(a)(1) as the action involves a controversy between citizens of different states and an amount in controversy which exceeds \$75,000.00.

5. Venue is proper in this district based on 28 U.S.C. § 1391(a) in that the event giving rise to the claim occurred within this district.

FIRST COUNT

6. Plaintiff, Fitchburg Mutual Insurance Company, alleges that the damage in this case was caused a failure to maintain a light fixture in the front

yard of Peter and Irene Anevski, which caused a fire, causing damage to the home of Anevski.

7. The light in question was negligently and improperly designed, manufactured, retailed and consisted of improper and insufficient warnings.

8. The light which was manufactured, designed and retailed by third party defendants fails to comply with the product liability act. N.J.S.A. 2A:58C-1 et. seq.

WHEREFORE, the defendant/third party plaintiff demands contribution and indemnification against the third party defendants, Cast Lighting, Aquarius Irrigation, Cast Lighting as a subsidiary of Aquarius Irrigation together with interest and costs of suit pursuant to the Joint Tortfeasors Contribution Act N.J.S.A. 2A:53A-1 et. seq.

METHFESSEL & WERBEL, ESQS.
Attorneys for Burlington Landscaping, Inc.



By: _____
Edward L. Thornton

DATED: May 8, 2014

EXHIBIT “A”

COZEN O'CONNOR
 A Pennsylvania Professional Corporation
 William E. Gericke, Esquire
 457 Haddonfield Road
 Libertyview, Suite 300
 P.O. Box 5459
 Cherry Hill, NJ 08002-2220
 Attorney Identification No.: 057741993
 Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEW JERSEY**

FITCHBURG MUTUAL INSURANCE COMPANY,
 as subrogee of PETER & IRENE ANEVSKI, H/W
 222 Ames Street
 Dedham, MA 02026-1850

Plaintiff,

v.

BURLINGTON LANDSCAPING, INC.
 100 Saw Mill Road
 North Haledon, NJ 07508-2789

Defendant.

CIVIL ACTION NO.:

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Fitchburg Mutual Insurance Company, as subrogee of Peter and Irene Anevski, H/W, by and through its counsel, Cozen O'Connor, hereby demands judgment against Defendant, Burlington Landscaping, Inc., and complains against Defendant as follows:

PARTIES

1. Plaintiff, Fitchburg Mutual Insurance Company ("Fitchburg"), is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts with its principal place of business located at 222 Ames Street, Dedham, Massachusetts, and, at all times relevant hereto, was engaged in the insurance business and was licensed to do business in the State of New Jersey.

2. Plaintiff's insureds, Peter and Irene Anevski, H/W ("Anevski"), are adult individuals and residents of the State of New Jersey who, at all times relevant hereto, owned the real and personal property located at 44 Sturbridge Circle in Wayne, New Jersey (the "Property").

3. Defendant, Burlington Landscaping, Inc. ("Burlington"), upon information and belief, is a corporation duly organized and existing under the laws of the State of New Jersey with its principal place of business located at 100 Saw Mill Road, North Haledon, New Jersey, and, at all times relevant hereto, was engaged, *inter alia*, in the landscaping business.

4. Fitchburg issued Policy No. H116465A to Anevski for the period January 4, 2011, to January 4, 2012, to insure the Property.

5. Fitchburg has made payments to Anevski under the aforementioned Policy in an amount in excess of Eight Hundred, Eighty Eight Thousand Dollars (\$888,000.00) for damages sustained as the result of a fire that occurred on or about November 16, 2011, at the Property and is subrogated to the rights of its insureds to the extent of its payments pursuant to the terms of the Policy, and now seeks recovery of said payments.

JURISDICTION AND VENUE

6. Jurisdiction is based on 28 U.S.C. §1332(a)(1) as this action involves a controversy between citizens of different states and an amount in controversy which exceeds Seventy Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

7. Venue is proper in this district based on 28 U.S.C. §1391(a) in that the event giving rise to this claim occurred within this district.

STATEMENT OF FACTS

8. Plaintiff incorporates by reference the preceding averments as though set forth at length herein.

9. Prior to November 16, 2011, Anevski engaged Burlington, for good and valuable consideration, to maintain all of the landscaping at the Property.

10. At all time prior to November 16, 2011, Burlington had exclusive custody and control over all aspects of the landscaping at the Property.

11. Prior to November 16, 2011, Burlington installed an in-ground landscaping lighting system at the Property.

12. Prior to November 16, 2011, Burlington was to maintain the in-ground landscaping lighting system ("lighting system"), as part of its overall maintenance of the landscaping at the Property.

13. Prior to November 16, 2011, landscaping debris accumulated in one of the lighting system's in-ground fixtures.

14. As a result of the accumulation of landscaping debris in the lighting system's in-ground fixture, a fire originated at the fixture on or about November 16, 2011.

15. Once the landscaping debris ignited in the in-ground fixture, the fire was able to spread to other portions of the Property.

16. As a direct and proximate result of the aforementioned fire, Anevski's Property was severely damaged and destroyed.

17. As a direct and proximate result of the aforementioned fire, Anevski suffered damage and destruction to their Property in an amount in excess of \$888,000.00.

COUNT I – NEGLIGENCE

18. Plaintiff incorporates by reference the preceding averments as though set forth at length herein.

19. The damage and destruction to Anevski's Property was caused by and resulted from the negligent, careless and/or reckless acts and/or omissions of Burlington, by and through

its agents, subagents, servants, representatives, employees and/or subcontractors acting within the course and scope of their employment. Said acts and/or omissions consisted of:

- (a) failing to properly and safely maintain the landscaping at the Property;
- (b) failing to properly and safely maintain the lighting system at the Property to avoid the hazards of fire;
- (c) failing to use the proper and necessary components and/or parts in the installation and maintenance of the lighting system at the Property;
- (d) improperly permitting and/or causing the lighting system to be installed and/or connected at the Property in an unsafe and dangerous manner;
- (e) failing to detect and correct the unsafe conditions that existed with the lighting system at the Property;
- (f) failing to take proper and adequate precautions to protect the Property from fire, and/or the hazards of fire;
- (g) failing to properly and adequately hire, train and supervise its agents, subagents, servants, representatives, employees and/or subcontractors to ensure that proper and safe means, methods, procedures and techniques were used in the installation and/or connection of the lighting system at the Property;
- (h) failing to properly and adequately hire, train and supervise its agents, subagents, servants, representatives, employees and/or subcontractors to ensure that proper and safe means, methods, procedures and techniques were used in the maintenance of the landscaping at the Property;
- (i) failing to properly and adequately hire, train and supervise its agents, subagents, servants, representatives, employees and/or subcontractors to ensure that proper and safe means,

methods, procedures and techniques were used in the maintenance of the lighting system at the Property;

(j) failing to warn Anevski of the danger presented to their Property by the use of inadequate means, methods, procedures and techniques in the installation and/or connection of the lighting system at the Property;

(k) failing to warn Anevski of the danger presented to their Property by failing to use the proper and necessary components and/or parts in the installation and/or connection of the lighting system at the Property;

(l) failing to warn Anevski of the danger presented to their Property by the use of inadequate means, methods, procedures and techniques in the maintenance of the landscaping at the Property;

(m) failing to warn Anevski of the danger presented to their Property by the use of inadequate means, methods, procedures and techniques in the maintenance of the lighting system at the Property;

(n) failing to properly and adequately inspect the installation and/or connection of the lighting system at the Property;

(o) failing to properly and adequately inspect the maintenance of the landscaping at the Property;

(p) failing to properly and adequately inspect the maintenance of the lighting system at the Property;

(q) creating an unreasonable risk of fire by failing to safely and properly maintain the landscaping and the lighting system at the Property;

(r) failing to take proper and adequate precautions to prevent the ignition of landscaping debris that Burlington knew or should have known could accumulate in the light fixtures of the lighting system at the Property and ignite;

(s) causing the aforesaid fire;

(t) causing and/or permitting the aforesaid fire to spread to other portions of the Property;

(u) failing to provide and/or observe adequate safety rules and/or regulations;

(v) failing to perform its work in a good and workmanlike manner; and

(w) otherwise failing to use due care under the circumstances.

20. As a direct and proximate result of Burlington's negligent, careless, reckless acts and/or omissions, Anevski suffered damage and destruction to their Property in an amount in excess of \$888,000.00.

WHEREFORE, Plaintiff, Fitchburg Mutual Insurance Company, as subrogee of Peter and Irene Anevski, H/W, demands judgment against Defendant, Burlington Landscaping, Inc., for damages in an amount in excess of \$888,000.00, together with interest, costs, attorneys' fees and such other damages as may properly be awarded by this Court.

Respectfully submitted,
COZEN O'CONNOR PC

BY s/ William E. Gericke
WILLIAM E. GERICKE, ESQUIRE
457 Haddonfield Road, Suite 300
P.O. Box 5459
Cherry Hill, NJ 08002-2220
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Attorney Identification No.: 057741993
Attorneys for Plaintiff, Fitchburg Mutual Insurance Company

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Fitchburg Mutual Insurance Company a/s/o Peter & Irene Anevski, h/w

(b) County of Residence of First Listed Plaintiff Dedham, MA

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, Email and Telephone Number)

William E. Gericke, Cozen O'Connor PC, 457 Haddonfield Rd, Ste 300, Cherry Hill, NJ 08002 856-910-5000 wgericke@cozen.com

DEFENDANTS

Burlington Landscaping, Inc.

County of Residence of First Listed Defendant Passaic County, NJ

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Recopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332(a)

Brief description of cause:

Defendant negligently and improperly maintain landscaping including but not limited to lighting system

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$
888,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE
10/08/2013SIGNATURE OF ATTORNEY OF RECORD
/s/ William E. Gericke

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE